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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 374

DARWYN GALLUP,

Appellant,

vs.

TOWNSHIP OF LOWER MERION

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

JOHN E. FORSYTHE,
HAROLD EVANS,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 374

DARWYN GALLUP,

Appellant,

vs.

TOWNSHIP OF LOWER MERION,

Appellee

STATEMENT OPPOSING JURISDICTION

Statement of Facts

On December 7, 1942, judgment was entered for the Township of Lower Merion, the appellee herein, against Darwyn Gallup, the appellant herein, in the sum of $25.00, costs and interest, for having violated Sec. 200 of the Township's Ordinance No. 722, approved April 16, 1941, generally known as The Lower Merion Building Code of 1941.

An appeal was allowed to the Court of Common Pleas of Montgomery County, and the case was tried *de novo* before Honorable Harold G. Knight, President Judge, without a jury. On June 15, 1944, a verdict was rendered for the Township. Exceptions were filed by the appellant herein

to the findings of fact, conclusions of law and verdict of the trial judge. These exceptions were dismissed by the court in banc on October 5, 1944.

An appeal to the Superior Court of Pennsylvania was taken from the decision of the Court of Common Pleas of Montgomery County. The matter was argued fully in the Superior Court and on March 5, 1946, Judge Arnold of that court handed down an opinion affirming the judgment of the trial court. The appellant herein then filed a petition for allowance of appeal to the Supreme Court of Pennsylvania, an answer was filed by the appellee, and on April 8, 1946, the appellant's petition was dismissed by the Supreme Court of Pennsylvania. The appellant then instituted the instant appeal to the Supreme Court of the United States.

The appellant is the owner of a property lying between Lancaster Avenue and the tracks of the Main Line of the Pennsylvania Railroad Company, at Wynnewood, in the Township of Lower Merion, and since 1936 has operated a trailer camp thereon (R. 47a, 48a).

Sec. 200 of The Lower Merion Building Code of 1941, which the lower courts held had been violated by the appellant, contains the following provision:

> "House Trailer means any vehicle used for living or sleeping purposes. If a house trailer is used for living or sleeping purposes within the Township for an aggregate of more than thirty days in any period of one year, it shall be considered as a single-family dwelling for all purposes of this ordinance."

The Township's uncontroverted evidence showed, and the trial court found as a fact that in July, 1942, and at other times relevant to this case, there was a total of eighteen trailers located on the appellant's property (R. 48a), that on July 26, August 17, September 1, and October 19, 1942, at which times a police officer of the Township

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inspected the trailer camp, a majority of the trailers were occupied, a few by transients or tourists, but a larger number by adults who were more or less "permanent" residents, and that on October 19, 1942, at least six of the trailers on the property were still occupied by the same persons who tenanted them on July 26, 1942 (R. 49a, 50a).

The trial court further found that the trailers which were permitted to remain on the appellant's property from July 26, 1942, to October 19, 1942, failed to conform with the provisions of The Lower Merion Building Code of 1941 in a number of respects. Specifically the trailers did not have proper access to public or private streets, as required by Sec. 404; they did not have the minimum area for single-family dwellings, required by Sec. 406, nor the proper window space, nor did they comply with certain other minimum standards for single-family dwellings set forth in Secs. 501.1 and 502.1 (R. 51a, 52a and 53a).

As it was clear that the appellant had permitted at least six trailer tenants to remain in his trailer camp for more than thirty days in a period of one year, and as it was equally clear that none of the trailers complied with the minimum standards for single-family dwellings required by The Lower Merion Building Code of 1941, the lower courts sustained the justice of the peace and held that the appellant had violated the Ordinance. The present appeal has been taken in an effort to upset the uniform rulings of the lower courts of Pennsylvania that the appellant violated the Township's Building Code.

I

The Statement as to Jurisdiction filed by the appellant in the Supreme Court of the United States does not comply with the requirements of Rule 12 of the Revised Rules of the Supreme Court of the United States for the following reasons:

(a) Appellant's Statement does not disclose the basis upon which it is contended that the Supreme Court of the United States has jurisdiction.

(b) Instead of setting forth the nature of the case and rulings of the courts below bringing the case within the jurisdictional provisions relied upon, as required by Rule 12, the appellant has simply reargued the case and filed a restatement at this time of the various arguments advanced by him from time to time in the lower courts which have been uniformly rejected by the lower courts.

(c) Appellant's Statement fails to disclose any grounds, as required by Rule 12, upon which it is contended the questions involved are substantial.

(d) Appellant's Statement fails to designate the stage of the proceedings and manner, as required by Rule 12, in which the alleged Federal questions were raised.

(e) Appellant's Statement fails to show the manner in which the alleged Federal questions were passed upon by the lower courts, as required by Rule 12.

(f) Appellant's Statement does not include any excerpts from the Record bringing the cause within the statute conferring jurisdiction on the Supreme Court of the United States, as required by Rule 12.

(g) Appellant's Statement does not include copies of the opinion of the trial court, or the opinion of the court in banc (Court of Common Pleas of Montgomery County, Pennsylvania), as required by Rule 12. For the convenience of the Court, copies of these opinions are attached hereto.

(h) Appellant's Statement does not cite any cases believed to sustain the jurisdiction of the Supreme Court of the United States in this cause, as required by Rule 12.

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II

The Record fails to show that any Federal question involving the taking of private property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States was necessarily decided by the Supreme Court of Pennsylvania or the Superior Court of Pennsylvania.

III

The Record does not present for decision any substantial Federal question. The sole question at issue in this proceeding is whether a provision in the building code of a municipality forbidding the use of house trailers for living or sleeping purposes for more than thirty days in any one year has a rational relation to the public health, safety, morals and general welfare of the community. Appellant's Statement strives to make it appear that the Township's Building Code prohibits the continuance of appellant's trailer camp business. From the very beginning of this litigation the appellant has sought to make it appear that the Township is trying to legislate against a "non-conforming use" on the appellant's property, but it is crystal clear that the Township has never at any stage in the proceedings refused to permit the appellant to operate a trailer camp on his property. The only thing the Township is attempting to do by this litigation is to enforce against the appellant, as it would against the operator of any trailer camp in the Township, the provision in its Building Code prohibiting the use of a trailer for living and sleeping purposes for more than thirty days in any one year. The sole purpose of the Township in adopting this regulation was to confine house trailers to their proper sphere in the community, namely, *temporary* accommodations for travel,

and to prevent them from being used as *permanent* dwellings. The appellant has tried repeatedly to drag into this case numerous issues which are not involved at all and the effect of which has been that the Township has been prevented from enforcing its Ordinance for a period of almost four years. The fallacies in the appellant's argument have been seen quite clearly by the lower courts. For example, Judge Arnold, writing the opinion for the Superior Court of Pennsylvania, said:

> "The building code is not an attempt to regulate or prohibit a trailer camp, which the appellant contends can only be done under a zoning ordinance. This clearly appears from the clause that the trailer is not to be considered a dwelling until it has remained 30 days. This is a fair standard by which to determine whether the use is temporary and transient, and therefore legal, or settled and fixed, and therefore illegal. If the local government cannot fix a thirty day limit it can as well be argued that no limit can be fixed, which in turn means that permanency cannot be avoided."

We submit, therefore, that any question under the Fourteenth Amendment, either as respects the Ordinance involved or the proceedings, is foreclosed by previous decisions of this Court (*Zucht* v. *King*, 260 U. S. 194), and is so unsubstantial and frivolous as to justify the motion to affirm, if not the motion to dismiss.

Respectfully submitted,

HAROLD EVANS,
JOHN E. FORSYTHE,
Counsel for Appellee.

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APPENDIX

IN THE COURT OF COMMON PLEAS, IN AND FOR THE COUNTY OF MONTGOMERY, PENNA.—NOVEMBER TERM, 1942

No. 156

TOWNSHIP OF LOWER MERION

vs.

DARWYN GALLUP (ALSO KNOWN AS N. D. GALLUP)

Sur: Exceptions to Findings of Fact, Conclusions of Law, and Verdict of the Trial Judge

KNIGHT, P. J.:

This case originated as an appeal from the judgment of a justice of the peace. It was tried by a judge without a jury, under the provisions of the Act of 1874, P. L. 109. The trial judge, holding that the defendant had violated a valid ordinance of the plaintiff township, rendered a verdict for the plaintiff, in the sum of $25.00, the penalty provided by said ordinance, for a violation of its terms.

As no exceptions were taken to the findings of fact, it is unnecessary to state them. Those interested may find the facts fully set forth in the adjudication of the trial judge, filed June 15th, 1944. The exceptions all relate to the conclusions of law drawn by the trial judge, and the verdict, which was based on these conclusions, and the facts.

The only question involved is the validity of that portion of Sec. 200 of the Lower Merion Township Building Code, which provides:

"If a house trailer is used for living or sleeping purposes within the Township for an aggregate of more than thirty days in any period of one year, it shall be considered as a single-family dwelling for all purposes of this ordinance."

The defendant contends that the above quoted provision of the building code is unreasonable and arbitrary, and therefore unconstitutional, and that the township cannot

change by legislative fiat, a trailer into a single-family dwelling.

The constitutionality of the provision in question was fully considered by the trial judge in his discussion of the question, and we do not care to add to what he said in the adjudication of June 15th, 1944, except to say that the industry of counsel, or our own research, has failed to disclose any later or additional authorities on the point involved.

At the argument, counsel for the defendant rested on his brief filed with the trial judge, and repeated his contention that a trailer cannot be changed to a single-family dwelling by a township ordinance. Literally, of course, this is true, but we are of the opinion that the meaning of the provision is clear, and its interpretation free from doubt. As we construe it, this provision means that if a house trailer is occupied for sleeping or living quarters, for over thirty days in a period of one year, it shall be considered as if it were a single-family dwelling, subject to all the regulations pertaining to dwellings of that type. The reasonableness of this provision was illustrated in this case, in which many of the trailers involved were not on wheels, but rested on temporary foundations, and had been used for living quarters by the same individuals for several months.

And now: October 5th, 1944, the exceptions are dismissed, and it is ordered and directed that judgment be entered for the plaintiff, and against the defendant, by the prothonotary, for the sum of Twenty-five Dollars.

By the Court, C.:

HAROLD G. KNIGHT, *P. J.*

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IN THE COURT OF COMMON PLEAS IN AND FOR THE COUNTY OF MONTGOMERY, PENNSYLVANIA, NOVEMBER TERM, 1942

No. 156

TOWNSHIP OF LOWER MERION

vs.

DARWYN GALLUP (also known as N. D. Gallup)

Sur: Trial By Judge Without a Jury

KNIGHT, P. J.

This case is an appeal by the defendant from the judgment of a justice of the peace, in favor of the plaintiff, in which judgment was entered against him in the sum of $25.00, costs and interest, representing the penalty for having violated the plaintiff's Ordinance No. 722, approved April 16th, 1941 (The Lower Merion Building Code of 1941).

After judgment, the appeal was allowed, plaintiff's statement of claim and defendant's affidavit of defense were filed, and by agreement of the parties, the case proceeded as an ordinary civil suit before a judge without a jury.

Findings of Fact

I

The plaintiff is the Township of Lower Merion, a first class township in Montgomery County, Pennsylvania.

II

The defendant, Darwyn Gallup, is an individual, residing at 305 East Lancaster Avenue, Lower Merion Township, Montgomery County. He has occupied said premises since the year 1936, and became the owner thereof some time during the year 1943.

III

Since his occupancy of the property, which consists of a tract of approximately two hundred feet square, front-

ing on Lancaster Avenue, and abutting the right of way of the Pennsylvania Railroad Company in the rear, the defendant has operated what is commonly known as a "trailer camp" or "tourist camp."

IV

A large dwelling house is located approximately in the center of the front half of the lot, and to the rear of this building is a garage. A driveway, with two entrances from Lancaster Avenue, circles the dwelling house. Along the easternmost and westernmost boundaries of the lot, and fronting on said driveway, are rows of "house trailers."

V

In July, 1942, and at other times relevant to this case, there was a total of eighteen trailers so located. Each trailer had its own assigned space, of about fifty by twenty-five feet, where it was jacked up on boxes, or some similar foundation, and several were equipped with a stripping that covered the space between the ground and the trailer floor, which served as a windbreak, and also added to the appearance of the trailer so equipped. For convenient access, flagstone walks, stepping stones, or boardwalks, were laid to lead to the doors.

VI

In summertime, water was furnished to the trailers by pipe lines leading from the dwelling house; in wintertime, water was obtained from either the dwelling or from the garage, which is equipped as a "community" house.

VII

Electricity was likewise brought into the individual trailers, by circuits from the dwelling house.

VIII

The smaller building toward the rear of the lot, was equipped as a community house. In a large room on the

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first floor were located washing and toilet facilities for men, and on the second floor similar accommodations were furnished for women. Some laundry facilities were likewise furnished therein. All trailer occupants had access to this building.

IX

Each trailer is furnished a garbage can, the refuse from which is deposited from time to time at a central collecting point to the rear of the community house, where it is picked up. Trash is either burned or disposed of in a similar manner.

X

The average trailer on the site was approximately thirty feet in length and eight feet wide, with windows about eighteen inches square. The approximate height, from floor to ceiling, was five and one-half feet. Each had one room, modernly equipped for use as a home, with the exception of toilet facilities. Heat was supplied by coal, gas or oil, as were cooking arrangements in some trailers.

XI

During the period of his occupancy of the premises, defendant rented out space to people who came there with trailers. Space for a single night was seventy-five cents; for a month the charge was ten dollars.

XII

Daniel Magee, a police officer of the plaintiff township, visited and inspected the trailer camp on July 26th, August 17th, September 1st, and October 19th, 1942. On all occasions the majority of the trailers were occupied, a few by transients or tourists, but the larger number by adults who were more or less "permanent" residents. On October 19th, 1942 at least six of the trailers were still occupied by the same individuals who tenanted them on July 26th. The defendant also had a number of trailers for sale, but the length of time they were located on the site does not appear.

XIII

The entire establishment was operated by the defendant in an orderly, sanitary manner, and no complaint whatever was made as to the method of operation. In fact the township health officer made favorable reports on the manner in which the camp was conducted.

XIV

On November 11th, 1941, defendant had requested the Board of Adjustment of the defendant township, for permission to rent spaces to trailer tenants, for an aggregate of more than thirty days in any period of one year, on the ground that many of his tenants were defense workers or engaged in defense activities. The board granted such permission, and on May 2nd, 1942, extended the permit for thirty days. The board, on June 29th, 1942, refused a further extension, on the ground that it appeared the use of the property as a trailer camp was a "non-conformity use."

XV

On July 13th, 1942, the defendant was notified by the plaintiff's superintendent of Building Inspection, that the committee on Building Regulations had decided that the Building Code of 1941, in respect to house trailers, must be adhered to; and that, as the trailers which had been on defendant's premises for more than thirty days, failed to conform with the Building Code in various specified respects, it would be necessary for defendant to remove them.

XVI

Section 200 of the Building Code of 1941, insofar as it relates to trailers, provides:

"*House trailer* means any vehicle used for living or sleeping purposes. If a house trailer is used for living or sleeping purposes within the Township for an aggregate of more than thirty days in any period of one year,

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it shall be considered as a single-family dwelling for all purposes of this ordinance."

This provision had been incorporated in the Township Building Code since 1939.

XVII

The trailers which were permitted to remain on defendant's property for a period of more than thirty days, failed to conform to the following provisions of the Building Code respecting single-family dwellings:

"Sec. 404. Access to Dwellings.

404.1 Access to Public or Private Street. No single family, two-family or multiple dwelling shall hereafter be erected or altered unless there is direct access to it through an open space on the same lot. Such open space shall be at least twenty feet wide and shall extend from the dwelling to a public street or highway, or to a private street or highway which conforms to the following requirements:

a. Such private street or highway shall be not less than twenty feet in width if it serves as the means of access for a dwelling for only one family;

b. Such private street or highway shall be not less than thirty feet in width if it serves as the means of access for a dwelling or dwellings for two families;

c. Such private street or highway shall be not less than forty feet in width, with a cartway width of not less than twenty feet, if it serves as the means of access for a dwelling or dwellings for three families.

d. Such private street or highway shall be not less than forty-five feet in width, with a cartway width of not less than twenty feet, if it serves as the means of access for a dwelling or dwellings for four families;

e. Such private street or highway shall be not less than fifty feet in width, with a cartway width of not less than

twenty-four feet, if it serves as the means of access for a dwelling or dwellings for five or more families;

f. Such private street or highway shall have a cartway so constructed and maintained that vehicles of all kinds may readily pass over it at all seasons of the year."

"Sec. 406. Minimum Area of Dwellings.

No dwelling hereafter erected or altered shall have a first story of less area than 430 square feet exclusive of porches."

"Sec. 501. Rooms

501.1 Habitable Rooms.

a. Every habitable room shall have one or more windows, opening directly on a street, or on a court or yard conforming to the requirements of this article.

b. Such rooms shall have a minimum width of six feet in any part, a minimum clear floor area of eighty square feet, and a minimum clear ceiling height of seven feet six inches for the minimum area, provided that kitchens may have a minimum clear floor area of seventy square feet.

c. It shall be unlawful to divide a habitable room or enclose a part thereof by fixed or movable partitions or other similar devices unless each part of the room so divided or enclosed shall separately conform to the requirements of this section."

"502.1 Windows. Windows required by this article shall have an area between stop beads of not less than ten per cent of the floor area of the room served by them, and in addition shall be not less than twelve square feet in area for habitable rooms and public halls, and eight square feet for bathrooms and similar rooms, provided that where a water-closet occupies a separate compartment, forty square feet or less in area, the minimum requirement shall be four square feet. At least fifty per cent of the required window area shall be arranged to open for ventilation. Where

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one hundred per cent of the window area is arranged to open for ventilation, the window area required for separate water-closet compartments, forty square feet or less in area, may be reduced to not less than three square feet."

XVIII

In addition to the notice of July 13th, 1942, the defendant was, on November 30th, 1942, served with a summons in assumpsit, for the recovery of the penalty provided for in Section 107.1 of the Building Code, which reads:

"107.1 PENALTIES. Any owner, tenant, builder, contractor, architect, workman or other person who shall erect, alter, reconstruct, repair, equip, or remove or shall do or cause to be done any work in the erection, alteration, reconstruction, repair, equipping or removal of any building, or structure, without the permit required by this ordinance first having been obtained, or who shall fail to comply with any of the requirements of the permit or of this ordinance; or who shall occupy or use or cause or permit to be occupied or used any building or structure, without the certificate of occupancy, required by this ordinance first having been obtained, or contrary to the provisions of the certificate of occupancy or of this ordinance; or who shall fail to comply with any regulation, order or direction of the Building Superintendent; or shall in any way violate any of the provisions of this ordinance, shall be liable on conviction thereof, to a fine or penalty not exceeding twenty-five dollars for each and every offense. And whenever such person shall have been notified by the Building Superintendent or by service of summons in a prosecution, or in any other way, that he is committing such violation of this ordinance, each day in which he shall continue such violation after such notification shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are now by law collected."

DISCUSSION

This action for the recovery of a penalty for the violation of the Lower Merion Building Code of 1941 was commenced

by a summons issued by a justice of the peace. The ordinance itself provides that "such fines or penalties shall be collected as like fines or penalties are now by law collected." The Township Code of 1931, P. L. 1206, Art. XXXIII, Sec. 3301—53 PS Sec. 19092-3301, provides that proceedings for the collection of such fines may be commenced by warrant or by summons, and when by warrant, "proceedings shall be had in all cases as in summary convictions * * *"

The language of this statute and those preceding it, has given rise to considerable confusion as to whether such a proceeding is civil or criminal in nature, a question which becomes important as affecting the burden of proof, the right of a defendant to a jury trial &c. We have examined a large number of cases dealing with this point, and are convinced that the more prevalent view, and probably the better one, is that the real nature of the case is civil, although some of the procedure is similar in form to a summary, criminal case. The general rule to this effect is stated in 12 Standard Pa. Practice 392, as follows:

"A suit * * * to recover a penalty for violation of an ordinance is not a summary proceeding but a proceedings of a civil nature and must be governed and decided by the rules applicable to civil suits."

See also Borough of Steelton *v.* Rashinsky, 21 Mun. R. R. 175 (Dauphin Co. 1929).

In any event, in the case before us, the parties have agreed in writing that the case be tried without a jury, thus eliminating any question of the right to trial by jury, and there is no dispute as to any of the material facts, thus obviating any questions as to the burden of proof. As this stipulation was filed in accordance with the Act of 1874, P. L. 109, relating to *civil* cases, we shall treat it as a civil case in all respects.

The defendant avers that the ordinance is unconstitutional, on the ground that it deprives him of his liberty or property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States. He states that the township may not legally ordain that a house trailer which is used for living or sleeping pur-

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poses within the township for an aggregate of more than thirty days in any period of one year, shall be considered as a single family dwelling for all purposes of the Building Code. His contention is that the township cannot validly declare that a trailer must be dealt with as a dwelling or become a dwelling, merely by reason of the passage of time.

Superficially, that would seem to be what the plaintiff has attempted to do. But looking at the matter from a practical standpoint, in connection with the other provisions of the code with respect to single family dwellings, the provision in question is nothing more than a prohibition against the use of a house trailer for living or sleeping purposes for more than thirty days in a year, for it is perfectly obvious that trailers, as we know them today, could not possibly conform to all requirements for dwellings, especially with respect to area and window space.

So, in reality, the question narrows down to a determination of whether the township may prohibit any but a temporary use of trailers for living purposes within its borders, without being held to have deprived the defendant of his "life, liberty, or property, without due process of law."

The avowed purpose of the Building Code is to "provide minimum standards, provisions and requirements for safe and stable design, methods of construction and uses of materials in buildings or structures * * * and to regulate the equipment, maintenance, use and occupancy of all buildings or structures." It professes to provide "minimum requirements for the promotion of the health, safety, morals and general welfare of the township." (Sec. 100.2).

If the ordinance does these things, no matter how severe a restriction it puts on the defendant's use of his property, it is valid and enforceable, and though possibly causing some hardship in particular instances, it will not be condemned as unreasonable or arbitrary. Defendant does not attack the ordinance as a whole, but only those provisions applying to trailers. Building codes, like zoning ordinances, so long as they are not arbitrary, unreasonable or discriminatory, have frequently been upheld as a valid exercise of the police power. But such regulations, in interfering with the use of property, must, to be valid, bear a

rational relation to the public safety, health, morals or general welfare.

Com. *v.* Devlin, 305 Pa. 440, 158 A. 161 (1932);
Bryan *v.* Chester, 212 Pa. 259, 61 A. 894 (1905);
Appeal of White, 287 Pa. 259, 134 A. 409 (1926);
See also Com. *v.* Gasloff, 338 Pa. 457, 13 A. (2nd) 67 (1940).

The exercise of the "police power" by municipalities has been extended to many fields of social and economic welfare. Thus, where not unreasonable, arbitrary or discriminatory, and bearing a rational relation to the health, safety, morals or general welfare of the community, ordinances (or other legislative acts) have been upheld as valid which (a) regulate the sale of second hand plumbing fixtures: Scranton *v.* Hollenberg, 152 Pa. Super. 138, 31 A. 2nd. 437 (1943); (b) prohibit dangerous and offensive nuisances: Appeal of Borough of Butler, 1 Sad. 219, 1 A. 604 (1885); (c) provide for inspection and supervision over public service corporations: Kittanning *v.* American Natural Gas Co., 239 Pa. 210, 86 A. 717 (1913); (d) regulate plumbing and drainage: Com. *v.* Leswing, 135 Pa. Super. 485, 5 A. 2nd. 809 (1939); (e) provide for zoning: Appeal of Kerr, 294 Pa. 246, 144 A. 81 (1928); Kistler *v.* Swarthmore, 134 Pa. Super. 287, 4 A. 2nd. 244 (1939); (f) regulate location of advertising signs: Appeal of Liggett, 291 Pa. 109, 139 A. 619 (1927); and a host of other subjects including building regulations: Beckershoff *v.* Bomba, 112 Pa. Super. 294 (1934).

If then, by adopting a building code, a township may provide for the health, safety and general welfare of its citizens by regulating the materials from which buildings may be constructed, by requiring a minimum of window space and ventilation, and by regulating the installation of plumbing fixtures and heating appliances, cannot such township forbid the use of house trailers for living or sleeping purposes for more than thirty days, unless the trailers conform to the rules laid down for single family dwellings?

What can be the relation of such a prohibition to the health, safety and morals of the community?

In dealing with this question, it is only fair to the defendant to emphasize that he has conducted his establish-

ment in a completely satisfactory manner, so much as that there has never been any complaint about his method of operation, either from official or private sources. However, it seems to us, that the municipality is justified in looking forward to the possibility that this establishment, or others of a similar character, may in the future be managed in a manner not free from criticism, and in a manner that would endanger the welfare of the community. Such a trailer camp cannot possibly have sanitation facilities such as can be installed in a single family dwelling, and an outbreak of contagious disease is not beyond the realm of possibility; such trailers not being of fireproof construction, the danger of a serious fire is not a too remote consideration. In addition, the close proximity of the occupants, and the more or less "informal" mode of living, are not, certainly, conducive to the highest standards of morality. While the occupants of defendant's camp are, at present, all adults, it can easily be seen that such a camp is by no means an adequate or proper place for the rearing of children. A trailer simply cannot be a substitute for a home.

In view of these considerations, it is impossible to escape the conclusion that the questioned provision has a very definite relation to the health, safety and morals of the community, and is a valid exercise of the township's police power.

The problem at hand is new in this state. Neither the research of counsel nor our own, has disclosed any Pennsylvania case directly in point.

In Com. *v.* Amos, 30 Del. Co. Rep., 552 (1941), the court invalidated as unreasonable and arbitrary, an ordinance which attempted to prohibit, under any circumstances, the parking of a trailer, which was or could be used for living purposes "on any lot, property or street within the limits of the Township of Tinicum." The Court based its decision on the fact that the state grants licenses permitting the normal operation of trailers on highways, and specifically pointed out that the prohibition of the ordinance was irrespective of the time involved in such parking. The court took pains to point out, however, that

"any municipal regulation of trailers and trailer camps which reasonably promotes the health, morals, safety or general welfare of the community, will undoubtedly be sustained."

In Com. *v.* Bechtel, 35 Mun. L. R. 65, (Beaver Co. 1943), the Borough of Monaca by ordinance attempted to impose a "tax" of $5.00 per month, or $50.00 per year, on any person keeping a habitable trailer on any lot owned by him, and provided for a penalty, upon summary conviction before a justice of the peace, of $5.00 for each day a violation continued, and in default of payment thereof, imprisonment in the borough jail until the defaulted tax and fine were paid in full.

The court pointed out that this ordinance violated the requirement that all property in a municipality must be taxed alike, and therefore could not be upheld as a tax measure. However, it based its decision of unconstitutionality on the ground that the fine provided could be pyramided by an official to a sum far in excess of the value of the property, to be followed by possible imprisonment for life. No authority is cited for this proposition, but even conceding it to be sound, it is not applicable to the case at bar, for the ordinance here being considered has no provision as to imprisonment, and fines may not be pyramided until after notice of the violation has been given to the individual involved. Consequently, we cannot accept this case as authority in the matter before us.

The two cases just discussed are the only two found in Pennsylvania even remotely related to the present case, and thus we turn to the courts of other jurisdictions for possible enlightenment and persuasive authority.

In Spitler *v.* Munster, 214 Ind. 75, 14 N. E. 2nd 579 (1938), a municipal ordinance which sought to regulate tourist camps and providing that no person should remain a resident of such a camp for more than thirty days, and requiring that sleeping rooms should contain five hundred cubic feet for each person, was challenged on the ground that it was unreasonable, as well as that it imposed greater restrictions than were provided for by state statute. The court upheld the ordinance as reasonable, particularly as

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the town of Munster was almost entirely residential in character, and near a very thickly populated area.

The Munster case shows the liberal attitude of the courts in permitting municipalities to restrict, within proper limits, the right of the individual to use his property as he pleases. And, naturally enough, this liberal attitude is even more pronounced where the community involved is densely populated.

Similar results were reached in Miller *v.* Quigg, 87 Fla. 462, 100 So. 270 (1924), where an ordinance of the City of Miami defined and regulated "tent cities," and laid down certain requirements as to sewer connections, and in Egan *v.* Miami, 130 Fla. 465, 178 So. 132 (1938), where the ordinance regulated tourist camps, tent cities and trailer camps, and had to do with the construction of cottages, their distance apart, drainage, toilets, baths, lighting, ventilation, etc. In the latter case, the court said:

"The ordinance assaulted reveals nothing more than an attempt on the part of the city to regulate tourist camps, trailer parks and tent cities in the interest of the public by imposing on them reasonable health and sanitary restrictions. Such restrictions always impose extra burdens on those affected but the rule is generally recognized, that where the interest of the individual and the interest of the public run counter, that of the individual must give way unless the burden imposed be arbitrary and unreasonable."

In Cady *v.* Detroit. 289 Mich. 499, 286 N. W. 805 (1939) cited by plaintiff, it was sought to enjoin the enforcement of an ordinance requiring sixty-five per cent of the owners of real estate within six hundred feet of plaintiff's property to consent to a license for the maintenance of a trailer camp, and prohibiting the parking of occupied trailers for more than ninety days in any twelve month period.

The court upheld the ordinance as a valid exercise of the police power, and said, with respect to the latter provision:

"Ordinances having for their purpose regulated municipal development, the security of home life, the preservation of a favorable environment in which to rear childen, the protection of morals and health, the safeguarding of the

economic structure upon which the public good depends, the stabilization of the use and value of property, the attraction of a desirable citizenship and fostering its permanency, are within the proper ambit of the policy power • • •"

The opinion in this case, contains a thorough discussion of the constitutional features involved, and it is worthy of note that considerable emphasis is placed upon the interests and welfare of children.

In Renker *v.* Brooklyn, 139 Ohio St. 484, — N. E. 2nd 925, (1942), plaintiff sought to enjoin the enforcement of a borough ordinance which provided for the licensing and regulation of trailer camps, and attacked particularly the provision limiting the parking of occupied trailers to a period of sixty days. The court upheld the ordinance, and observed that although the plaintiff endeavored to make a high class establishment of his camp, nevertheless he still had "a trailer camp with the increased and unavoidable difficulties inherent in any effort to accommodate permanently a large, mixed group of people confined to limited space and equally limited facilities intended for transients alone."

In nearly all these cases from other jurisdictions, the localities involved were densely populated. It is common knowledge that Lower Merion Township is likewise thickly populated, and adjacent to a large metropolitan area. In determining whether a given ordinance or a provision thereof, is reasonable, much must depend upon the requirements of different localities, the density of the population of the town in which the ordinance has been enacted, and the danger and evils prevalent therein, and what would be reasonable in one place might be highly unreasonable in another: 19 R. Cl., sec. 113, p. 807.

One distinct difference in the ordinance before us and those questioned in those cases, does exist, however. In the other cases, the ordinances were primarily concerned with establishing a more or less comprehensive system for licensing or regulating trailer or tourist camps. The provision of the Lower Merion ordinance is an incidental, though far-reaching definition in the Building Code. Per-

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haps its propriety would have been more readily apparent had it been incorporated in an ordinance dealing with the regulation of trailer camps as such. However, it is not for us to say what method the township should adopt to insure their use as purely temporary accommodations for transients.

We therefore conclude that the provision in the ordinance is reasonable and valid, and inasmuch as there is little or no dispute as to any of the material facts, the defendant must be deemed guilty of a violation thereof.

Conclusions of Law

1. The Lower Merion Building Code of 1941, as it pertains to the use and occupancy of house trailers, is reasonable and valid.

2. The defendant has violated the provision of said Building Code.

3. Plaintiff is entitled to a verdict in its favor, for the amount of the fine or penalty provided therein.

And Now, this 15th day of June, 1944, a verdict is rendered in favor of the plaintiff and against the defendant, in the sum of Twenty-five Dollars.

If no exceptions are filed to these findings of fact and conclusions of law within thirty days of the filing thereof, judgment shall be entered thereon by the prothonotary.

By the Court.

HAROLD G. KNIGHT,
P. J.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 374

DARWYN GALLUP,

Appellant,

vs.

TOWNSHIP OF LOWER MERION,

Appellee

MOTION TO DISMISS APPEAL OR AFFIRM DECISION OF STATE COURT

And Now, this 23d day of July, 1946, comes the Township of Lower Merion, appellee, by its counsel, John E. Forsythe, Township Solicitor, and moves to dismiss the appeal herein on the ground that it is manifest that the appeal was taken for delay only and that the case presents no substantial Federal question and it further moves, if the motion to dismiss is not granted, that this Court affirm the decisions of the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania on the ground that the questions on which the decision in this cause depends are so unsubstantial as to need no further argument, all as appears in the Statement Opposing Jurisdiction filed herewith.

JOHN E. FORSYTHE,
Township Solicitor.